

1 **SECTION 161.** 12.035 of the statutes is created to read:

2 **12.035 Posting and distribution of election-related material.** (1) In this

3 section, “election-related material” means any written matter which describes, or
4 purports to describe, the rights or responsibilities of individuals voting or registering
5 to vote at a polling place or voting an absentee ballot at the office of the municipal
6 clerk or an alternate site under s. 6.855.

7 (2) The legislature finds that posting or distributing election-related material
8 at the polling place, at locations where absentee ballots may be cast, or near the
9 entrance to such locations when voting is taking place may mislead and confuse
10 electors about their rights and responsibilities regarding the exercise of the franchise
11 and tends to disrupt the flow of voting activities at such locations. The legislature
12 finds that the restrictions imposed by this section on the posting or distribution of
13 election-related material are necessary to protect the compelling governmental
14 interest in orderly and fair elections.

15 (3) (a) No person may post or distribute any election-related material during
16 polling hours on election day at a polling place.

17 (b) No person may post or distribute any election-related material during
18 polling hours on any public property on election day within 100 feet of an entrance
19 to a building containing a polling place.

20 (c) No person may post or distribute any election-related material during hours
21 that absentee ballots may be cast at the office of the municipal clerk or at an alternate
22 site under s. 6.855.

23 (d) No person may post or distribute election-related material during the hours
24 that absentee ballots may be cast on any public property within 100 feet of an

entrance to a building containing the office of the municipal clerk or an alternate site under s. 6.855.

(4) Subsection (3) does not apply to any of the following:

(a) The posting or distribution of election-related material posted or distributed by the municipal clerk or other election officials.

(b) The placement of any material on the bumper of a motor vehicle located on public property.

(5) A municipal clerk, election inspector, or law enforcement officer may remove election-related material posted in violation of sub. (3) and may confiscate election-related material distributed in violation of sub. (3).

Ans from p. 106
SECTION 162. 12.07 (2) of the statutes is amended to read:

12.07 (2) No employer may refuse to allow an employee to serve as an election official under s. 7.30 or make any threats or offer any inducements of any kind to the employee for the purpose of preventing the employee from so serving.

SECTION 163. 12.09 of the statutes is repealed and recreated to read:

12.09 Election threats. (1) No person may personally or through an agent make use of or threaten to make use of force, violence, or restraint in order to induce or compel any person to vote or refrain from voting at an election.

(2) No person may personally or through an agent, by abduction, duress or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election.

(3) No person may personally or through an agent, by any act compel, induce, or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum.

SECTION 164. 12.13 (3) (ze) of the statutes is created to read:

1 12.13 (3) (ze) Compensate a person who obtains voter registration forms from
2 other persons at a rate that varies in relation to the number of voter registrations
3 obtained by the person.

4 **SECTION 165.** 12.13 (4) of the statutes is repealed.

5 **SECTION 166.** 12.60 (1) (b) of the statutes is amended to read:

6 12.60 (1) (b) Whoever violates s. 12.03, 12.05, 12.07, 12.08 or 12.13 (2) (b) 8., (3)
7 (b), (c), (d), (g), (i), (n) to (x), (ze), (zm) or (zn) may be fined not more than \$1,000, or
8 imprisoned not more than 6 months or both.

9 **SECTION 167.** 12.60 (1) (c) of the statutes is amended to read:

10 12.60 (1) (c) Whoever violates s. 12.13 (3) (am) ~~or (4)~~ may be required to forfeit
11 not more than \$500.

12 **SECTION 168.** 12.60 (1) (d) of the statutes is amended to read:

13 12.60 (1) (d) Whoever violates s. 12.035 or 12.13 (3) (h) may be required to
14 forfeit not more than \$100.

15 **SECTION 169.** 17.29 of the statutes is amended to read:

16 **17.29 Effect of chapter.** The provisions of this chapter supersede all contrary
17 provisions in either the general law or in special acts, except ~~ch. 7~~ ss. 6.26 (2) (b), 6.28
18 (2) (b), 6.55 (6), 6.875, and 7.30 relating to appointed election officers ~~appointed for~~
19 ~~the election wards or polling places in the state~~ officials and ch. 21 relating to the
20 military staff of the governor and to officers of the Wisconsin national guard; and
21 shall govern all offices whether created by general law or special act, unless
22 otherwise specially provided.

23 **SECTION 170.** 301.03 (3a) of the statutes is created to read:

24 301.03 (3a) Subject to all of the following, design a form to provide notice under
25 ss. 302.117, 973.09 (4m), and 973.176 (2) of ineligibility to vote under s. 6.03 (1) (b):

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SECTION 170

The department shall retain the form ↑

1 (a) The form shall inform the person who is ineligible to vote that he or she may
2 not vote in any election until his or her civil rights are restored.

3 (b) The form shall inform the person who is ineligible to vote when his or her
4 civil rights are expected to be restored.

5 (c) The form shall include a place for the person to sign indicating that he or
6 she understands that he or she may not vote in any election until his or her civil
7 rights are restored. The form shall include a place also for a witness signature.

8 (d) ~~The form shall be kept in the person's file~~ and a copy shall be given to the
9 person.

10 **SECTION 171.** 301.03 (20) of the statutes is created to read:

11 301.03 (20) Transmit to the elections board, on a continuous basis, a list
12 containing the name of each living person who has been convicted of a felony under
13 the laws of this state and whose civil rights have not been restored, together with his
14 or her residential address and the date on which the department expects his or her
15 civil rights to be restored.

16 **SECTION 172.** 302.117 of the statutes is amended to read:


17 **302.117 Notice regarding ineligibility to vote.** When an inmate who is
18 disqualified from voting under s. 6.03 (1) (b) is released to parole or extended
19 supervision, the department shall inform the person in writing that he or she may
20 not vote in any election until his or her civil rights are restored. The department shall
21 use the form designed under s. 301.03 (3a) to inform the person, and the person and
22 a witness must sign the form. e shall

23 **SECTION 173.** 880.33 (9) of the statutes is amended to read:

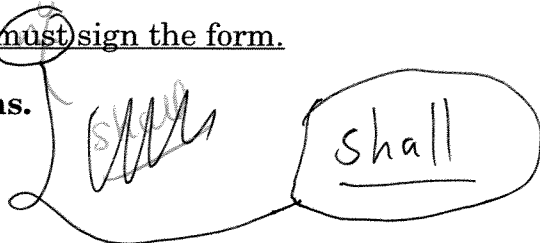
24 880.33 (9) All the rights and privileges afforded a proposed incompetent under
25 this section shall be given to any person who is alleged to be ineligible to register to

1 vote or to vote in an election by reason that such person is incapable of understanding
2 the objective of the elective process. The determination of the court shall be limited
3 to a finding that the elector is either eligible or ineligible to register to vote or to vote
4 in an election by reason that the person is or is not capable of understanding the
5 objective of the elective process. The determination of the court shall be
6 communicated in writing by the clerk of court to the election official or agency
7 charged under s. 6.48, 6.92, 6.925 ~~or~~ 6.93, or 7.52 (5) with the responsibility for
8 determining challenges to registration and voting which may be directed against
9 that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5)
10 and any subsequent determination of the court shall be likewise communicated by
11 the clerk of court.

12 **SECTION 174.** 973.09 (4m) of the statutes is amended to read:

13 973.09 (4m) The department shall inform each probationer who is disqualified
14 from voting under s. 6.03 (1) (b) that he or she may not vote in any election until his
15 or her civil rights are restored. The department shall use the form designed under
16 s. 301.03 (3a) to inform the probationer, and the probationer and a witness must sign
17 the form. 

18 **SECTION 175.** 973.176 (2) of the statutes is amended to read:

19 973.176 (2) VOTING. Whenever a court imposes a sentence or places a defendant
20 on probation for a conviction that disqualifies the defendant from voting under s. 6.03
21 (1) (b), the court shall inform the defendant in writing that he or she may not vote
22 in any election until his or her civil rights are restored. The court shall use the form
23 designed by the department of corrections under s. 301.03 (3a) to inform the
24 defendant, and the defendant and a witness must sign the form. 

25 **SECTION 176. Nonstatutory provisions.**

SECTION 176

1 (1) ELECTION-RELATED CONTINGENCY PLANNING. The elections board shall
2 prepare a report and recommendations with regard to state and local
3 election-related contingency planning efforts and preparedness regarding natural
4 disasters or terrorist activities that may occur at or near election time. No later than
5 the first day of the 7th month beginning after publication of this act, the elections
6 board shall submit the report and recommendations to the chief clerk of each house
7 of the legislature for distribution to the appropriate standing committees of the
8 legislature in the manner provided under section 13.172 (3) of the statutes. ✓

9 (2) AUDITS OF LOCAL ELECTION PRACTICES. The elections board shall prepare
10 recommendations with regard to random post-election audits of local election
11 practices to be conducted in the fall of odd-numbered years. The recommendations
12 shall include recommendations on how election practices in a given municipality
13 may be reviewed by election officials of other, similar-sized municipalities and how
14 the state will fund such audits. No later than December 31, 2006, the elections board
15 shall submit the recommendations to the chief clerk of each house of the legislature
16 for distribution to the appropriate standing committees of the legislature in the
17 manner provided under s. 13.172 (3) of the statutes.

18 (3) POLLING PLACE OBSERVATION RULES. *create a.r. X*

19 (a) The elections board shall submit in proposed form the rules required under
20 section 7.41 (5) of the statutes, as created by this act, to the legislative council staff
21 under section 227.15 (1) of the statutes no later than the 60th day beginning after
22 publication *STET: leave as typed* ~~of this act~~ ~~the effective date of this paragraph~~

23 *STET: leave as typed* (b) Using the procedure under section 227.24 of the statutes, the elections
24 board may promulgate rules required under s. 7.41 (5) of the statutes, as created by
25 this act, for the period before the effective date of the rules submitted under

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paragraph (a), but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the board is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

(4) FEES FOR COPIES OF REGISTRATION LIST. The elections board may promulgate emergency rules under section 227.24 of the statutes implementing section 6.36 (5) of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until the date on which permanent rules take effect. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the elections board is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(5) ELECTION OFFICIALS: INTERIM TERMS. *as affected by this act* Notwithstanding section 7.30 (6) (a) of the statutes, the persons who are appointed as election officials under section 7.30 (4) of the statutes in 2006 shall serve for terms of one year and until their successors are appointed and qualified.

(6) DISTRIBUTION OF FORMS TO CONVICTED FELONS. No later than the first day of the 6th month beginning after the effective date of this subsection, the department of corrections shall distribute, and have signed in front of a witness, a copy of the form designed under section 301.03 (3a) of the statutes, as created by this act, to each person who is on probation, parole, or extended supervision on that date and who is disqualified from voting in any election under section 6.03 (1) (b) of the statutes.

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SECTION 177. Initial applicability.

(1) NOTICE OF SCHOOL DISTRICT REFERENDA. The treatment of section 8.37 first applies to a measure or question ~~required to be filed~~ that becomes subject to a filing requirement under section 8.37 of the statutes on the effective date of this act. subsection

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(2) RECOUNTS. The treatment of section 5.90 by this act first applies to recount petitions filed on the effective date of this act. subsection and the creation of section 5.90(2) and (3) of the statutes apply

(3) TERMS OF CERTAIN POLL WORKERS. The treatment of sections 7.30 (2) (am), (6) (a), and (6) (am) first applies to appointments made on the effective date of this subsection. ✓ of the statutes

(4) PETITIONS FOR RECALL. The treatment of sections 9.10 (2) (b), (d), and (4) (a) first applies with respect to petitions for recall that are offered for filing on the effective date of this subsection. and

(5) CIRCULATORS OF NOMINATION PAPERS AND PETITIONS. The treatment of sections 5.02 (16g), 8.10 (3) (intro.), 8.15 (4) (a), 8.20 (3), 8.40 (2), and 9.10 (2) (am) 2. first applies with respect to nomination paper circulation periods that begin and petitions that are initially circulated on the effective date of this subsection. em of the statutes

(6) NOTIFICATION REGARDING INELIGIBILITY TO VOTE DURING PAROLE OR EXTENDED SUPERVISION. The treatment of section 302.117 of the statutes first applies to persons whom the department of corrections releases to parole or extended supervision on the effective date of this subsection. ✓

(7) NOTIFICATION REGARDING INELIGIBILITY TO VOTE DURING PROBATION. The treatment of section 973.09 (4m) of the statutes first applies to persons whom the court places on probation on the effective date of this subsection. ✓

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1 (8) NOTIFICATION AT SENTENCING REGARDING INELIGIBILITY TO VOTE. The treatment
2 of section 973.176 (2) of the statutes first applies to persons who are sentenced or placed on probation
3 on the effective date of this subsection. ✓

4 (9) ELECTION OFFICIAL TRAINING. The treatment of sections 7.15 (1m), 7.30 (2)
5 (c), and 7.31 by this act first applies with respect to ~~to election officials appointed to serve for~~
6 elections held in 2008. of the statutes January 1, 2006, or on

7 **SECTION 178. Effective dates.** This act takes effect on the day after
8 publication, whichever is later, except as follows:

9 (1) EFFECTIVE DATE FOR NOTIFICATION. The treatment of sections 302.117, 973.09
10 (4m), and 973.176 (2) of the statutes and section 133 (6), (7), and (8) of this act take
11 effect on the first day of the 6th month beginning after publication.

(END)

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ASSEMBLY BILL 61

1 qualifications that applied to original appointees shall be required of persons who fill
2 vacancies. Vacancies, except that a vacancy may be filled in cases of emergency or
3 because of time limitations by a person from who resides in another aldermanic
4 district or ward within the municipality, and if a municipal clerk or deputy clerk fills
5 the vacancy, the clerk or deputy, but not more than a total of 2 individuals in any
6 municipality, may serve without regard to the clerk's or deputy's municipality of
7 residence, if the clerk or deputy meets the other qualifications.

(END)

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WS 75-23

Section #. 7.30 (6) (b) of the statutes is amended to read:

7.30 (6) (b) Prior to the first election following the appointment of the inspectors, the municipal clerk shall appoint one other than an inspector who is appointed under s. 7.31 to serve as chief inspector. No person may serve as chief inspector at any election who is not certified by the board under s. 7.31 at the time of the election. The chief inspector shall hold the position for the remainder of the term unless the inspector is removed by the clerk or the inspector ceases to be certified under s. 7.31, except that whenever wards are combined or separated under s. 5.15 (6) (b), the municipal clerk shall appoint another inspector who is certified under s. 7.31 to serve as chief inspector at each polling place designated under s. 5.15 (6) (b). If a vacancy occurs in the position of chief inspector at any polling place, the municipal clerk shall appoint one of the other inspectors who is certified under s. 7.31 to fill the vacancy.

History: 1971 c. 242; 1971 c. 304 s. 29 (1), (2); 1971 c. 336; 1973 c. 280, 334; 1975 c. 93, 101; 1977 c. 394, 427, 447; 1979 c. 89, 260, 355; 1983 a. 183, 484, 538; 1985 a. 131 s. 3; 1985 a. 304, 332; 1987 a. 391; 1989 a. 192, 359; 1995 a. 16 s. 2; 1997 a. 127; 1999 a. 182; 2001 a. 16, 109; 2005 a. 27.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

December 2, 2005

LRB-3947/P2dn

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stays

Robert Conlin:

1. Section 5.68 (1) and (2), stats. relates to apportionment of the costs of acquisition of, among other things, election apparatus, ballots, supplies and other materials. Proposed s. 5.68 (3m) directs the election administration council to provide guidance to local governments covering the procurement of election apparatus, ballot forms and supplies. You may wish to consider broadening the scope of proposed s. 5.68 (3m) to cover ballots as well as ballot forms and to cover materials as well as supplies.

2. Proposed s. 6.22 (4) (c) provides that a military elector may indicate an alternate address on his or her absentee ballot application. Under the draft, if the elector's ballot is returned as undeliverable prior to the deadline for return of absentee ballots, the clerk must send or transmit an absentee ballot to the elector at the alternate address. Because under proposed s. 6.86 (1) (c) the deadline for military electors to request absentee ballots is 5 p.m. on the Friday before an election, the draft may not accord sufficient time in some situations for the clerk to mail an absentee ballot, have the ballot returned, and then mail an absentee ballot to an alternate site, and for the elector to receive and vote the ballot and have the voted ballot postmarked by election day.

3. Proposed s. 6.22 (5m) and related provisions, which permit military electors, as defined in s. 6.22 (1) (b), stats., to have their ballots delivered and counted after election day as long as they are postmarked by election day, would, in cases where a recount is requested, require canvasses to be reopened before a recount could proceed. It is difficult to say how much time might be used in the reopening of a canvass. However, because under current law most local elective officials take office either 7, 14 or 21 days after the date of the spring election, it is difficult currently in many cases to complete a recount in time for the winner to take office on the appointed day. The change could make it somewhat more difficult than it is currently. If an elective official cannot take office on time, it can have an effect upon who is appointed to other offices (such as county board chair or member of a city commission) whose terms begin shortly after the term of the elective official who appoints the official.

4. Also with respect to proposed s. 6.22 (5m) and related provisions, currently, under s. 7.15 (1) (cm), stats., municipalities must transmit absentee ballots to all absentee voters who have requested ballots, including the voters who are affected by this draft,

no later than 21 days before the spring election and no later than 30 days before the general election. Although calendar fluctuations can make this task more difficult or less difficult to complete within the time prescribed by law, as a general rule the time allotted for canvassing of the spring and September primaries and ballot preparation for the spring and general elections is used completely. Therefore, under this draft it is likely that, in municipalities where military electors do not return absentee ballots by election night, unless municipal clerks and boards of election commissioners exercise an unusual degree of initiative and municipalities agree to take on some additional costs for expedited printing service, absentee ballots could be distributed as late as approximately 15 days before the spring election and as late as approximately 24 days before the general election. This will make it more difficult for these ballots to be returned through the world mail system by election day. The voters who are affected by this draft will have extra time to return their ballots, but these voters could still be impacted to some degree by this change if their current ballot transit times are less than approximately seven days.

5. Proposed s. 6.22 (5m) permits the ballots of military electors to be counted under certain conditions if received after election day. Proposed s. 6.86 (1) (c) provides a later deadline for military electors to apply for an absentee ballot than is provided for other electors. Although these provisions generally provide a dispensation, the effect of the provisions is to create a procedure under which the ballots of electors may either be counted or not counted or absentee ballots may be provided or not provided based upon the status of the electors, which could raise an equal protection issue. The U.S. Supreme Court has sometimes approved distinctions made by states in the treatment of absentee voters. However, the Court has said that because voting is a fundamental right, any distinction made by a state will be subject to close scrutiny. See *McDonald v. Board of Election Commissioners*, 393 U.S. 1404, 1407 (1969), in which the Court, after applying this scrutiny, nevertheless permitted Illinois to make a distinction based upon prisoner status. One argument that could be advanced in support of this draft is that national security requires disparate treatment of the ballots of military electors, as defined in this draft, and that the conditions under which those electors must operate may prevent them from taking advantage of the same procedures for expeditious absentee balloting that other electors can conveniently use. It may also be argued that the type of treatment proposed in this draft is not invidious, which may distinguish it from other situations. It is possible to argue, however, that the class of electors that is affected by this draft may not be drawn with sufficient closeness to provide the state with a sufficient basis for treating their ballots differently in every case. Because the Court does not appear to have ruled on this point, it is not possible to predict how the issue posed by this draft will be assessed.

The proposed treatment of s. 6.86 (1) (b) stats. similarly provides a later deadline for indefinitely confined electors to apply for an absentee ballot than is provided for other electors.

6. The treatment of s. 6.28 (1), stats., to change the deadline for voter registration from 13 days before an election to 20 days before an election will increase the number of voters who must register at an address where they do not expect to be residing on the 10th day before election day, which under s. 6.10 (1), stats., fixes an elector's voting residence. If moving from one election district to another, these electors will need to vote at the polling places serving their new residences and file address change forms

at those polling places. If the registration deadline were the same as the date on which an elector's voting residence is fixed, this process could be avoided.

7. This drafts amends s. 6.33 (1), stats., and creates proposed s. 6.36 (4) to require new applicants for registration who possess a valid driver's license issued by another state to provide the name of the state, the license number, and the expiration date of the license. The draft then requires the Elections Board, following every general election, to contact the chief election official of each state that has issued a valid driver's license to an elector who votes in that election and to inquire whether the elector voted in the same election in that state. The committee's original draft provided for this contact to be made after every election, but since the general election is the only election held in this state that coincides with an election that is also held in every other state, and since it well may be legal for an elector to vote in one state and then vote in this state on a later date, I changed the draft to apply only to general elections. Please let me know if you would like to see this treated differently. The draft also provides for each applicant to enter the expiration date of his or her out-of-state licence on his or her registration form, and for this verification to be made by the board at every general election for so long as the license remains valid. It should be noted that many holders of out-of-state licenses are recent arrivals who eventually apply for Wisconsin licenses. When an applicant receives a Wisconsin license, the Wisconsin DOT requires the applicant to surrender any valid out-of-state license that the applicant possesses. DOT then forwards the out-of-state license to the issuing state with instructions to cancel the license. Therefore, it is possible under the draft for voting inquiries to continue to be made after a license has been canceled. It would be desirable, therefore, to provide that DOT must forward information to the board regarding any out-of-state licenses that are surrendered to it so the board can stop its inquiries. In addition, although this license information remains confidential under the draft, it remains on the registration list forever and may therefore be a source of confusion in later years. You may wish to consider entering this information on a separate list because it will likely be used only for short-term purposes.

8. Proposed s. 6.34, which requires all electors to provide proof of residence when registering to vote and defines the only forms of proof that are acceptable, permits an elector to use as proof "[a]n official identification card or license issued by an employer in the normal course of business that contains a photograph of the license holder, but not including a business card." Because a significant portion of the voting population is self-employed or employed only within the same family, this provision in effect permits this portion of the electorate to create their own registration identification cards. You may wish to consider whether such a self-identification procedure effectuates your purpose in creating this new requirement. In addition, while some of the forms of acceptable proof of residence must be current, the proposed text permits an official identification card issued by a Wisconsin governmental body or unit that does not contain an expiration date, a bank statement, a paycheck, or a check or other document issued by any unit of government to be used as proof even if the document that is used is not current. You may wish to consider requiring that a document that does not contain an expiration date be dated within some period, for example one year, prior to the date of application for registration.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3947/1dni
JTK.....

PWS D4A

11 . Currently, under s. 6.79 (2) (d), stats. and related provisions, an elector is required to show identification before voting (or enclose a copy of identification with his or her absentee ballot) if he or she has registered by mail and has not voted in an election for national office in this state. This requirement implements a federal mandate contained in the federal Help America Vote Act of 2002 (HAVA), section 303 (b). The term "identification" is defined in s. 5.02 (6m), stats. and this definition also conforms to HAVA. HAVA also requires that an elector who does not have the requisite identification must be permitted to vote a provisional ballot. Current state law in s. 6.97, stats. implements this requirement. This draft deletes the federally required language from state law and substitutes a system under which all electors, other than military and overseas electors as defined by federal law, must provide "proof of residence" (as defined in the draft) in order to register to vote (see proposed s. 6.34). Under the draft, no separate identification is required to vote because an elector (except a military elector) must have provided the ID in order to register. Section 303 (b) (3) of HAVA provides that the federal identification requirements do not apply to any individual who has registered to vote on a form prescribed under the National Voter Registration Act and HAVA. Among other things, the National Voter Registration Act and HAVA require registration forms to include certain specific quoted questions and in the case of a question relating to citizenship, specific boxes for the registrant to check "yes" or "no". Wisconsin's registration forms under current state law and this draft do not conform to these requirements. Therefore, at this point the changes proposed by this draft that delete the federal identification requirements do not appear to be consistent with federal law.

Although the current ^{state} law specifies certain information that must be on the registration form and authorizes the board to prescribe the format of the form.

9. Under proposed s. 6.36 (5), the Elections Board prescribes a fee for obtaining a copy of the registration list that may exceed the cost of reproduction. The draft requires that revenues from fees received be shared between the state and local governments. Because the bill provides no appropriation to the board for use in depositing and dispensing fee revenues, any apportionment of revenues will necessitate requesters of copies to write multiple checks to all jurisdictions receiving revenues in the appropriate amounts. For a statewide list, the procedure approaches unworkability. Therefore, you may wish to add an appropriation or remove this provision from the draft and place it in separate legislation together with the necessary appropriation.

10. Currently, s. 6.56 (3), stats., requires each municipal clerk or board of election commissioners to conduct a postcard audit of voter registrations that occur at polling places on election day. This draft amends that subsection to require that either the clerk, board of election commissioners or elections board conduct the audits. It would be preferable to indicate in the draft who has primary responsibility to ensure that the audit is conducted, in case the parties should disagree over who should conduct the audit. Also in this connection, s. 6.56 (4), stats., requires municipal clerks to perform a similar audit of electors who appear to have voted more than once at an election. You may wish to adopt the same procedure for this audit. In addition, it should be noted that while polling place registrations are audited and mail registrations are confirmed under s. 6.32 (4), stats., (thereby ensuring that the voter's address is deliverable), and this draft proposes to extend confirmation requirements to all registrations not received in person by the municipal clerk or at by a deputy at another authorized location, there exists no similar audit or confirmation for registrations taken in person by the municipal clerk or by a deputy at another authorized location. You may wish to extend the confirmation/audit process to cover these registrations.

11. The treatment of s. 6.875 (6), stats., and proposed s. 6.875 (7), which require certain information to be posted in nursing and retirement homes and community-based residential facilities and which authorize representatives of political parties to enter the homes and facilities to observe absentee voting procedures, may be difficult to enforce given the fact that these homes and facilities are located on private property. If the owner of the property does not permit the posting or the entry of the observers, do you want to allow the voting at the home or facility to go forward?

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this time is closer to the end of the business day, it may increase the difficulty in dispatching a messenger to secure any late returns on that day. Closely tied to this deadline is the deadline of 9 a.m. on the Thursday following each election under s. 7.60 (3), stats., which is the latest that the county board of canvassers may begin its canvass. You may wish to consider pushing back this deadline to accommodate the revised municipal deadline provided in this draft.

15. 14. Proposed s. 7.52 and related provisions authorize municipalities to canvass absentee ballots at an alternate site instead of at polling places as currently provided. Under the draft, the canvassing is performed by a separate board of absentee ballot canvassers consisting of 3 individuals. The canvassing may not begin earlier than the time that the polls open (7 a.m. on election day). Per s. 6.87 (6), stats., absentee ballots may be received as late as 8 p.m. on election day [the draft proposes to allow the ballots of military electors to be received later under certain conditions]. The canvassing of absentee ballots, except late ballots of military electors, may not be completed until the poll lists are returned from the polls together with the nonabsentee returns, because the absentee voters must be cross-checked against the voters casting nonabsentee returns to ensure that voters do not vote more than once. Under s. 7.51 (5) (b), stats., municipal election returns must be delivered to the counties no later than 2 p.m. on the day after an election [the draft proposes to change this time to 4 p.m.]. Under s. 7.60 (3), stats., county boards of canvassers must convene to canvass the municipal returns no later than 9 a.m. on the 2nd day after an election. Under these provisions, the feasibility of adopting an alternate site for absentee ballot canvassing will depend upon the population of the municipality and the turnout at an election. However, it is obvious that if a populous municipality attempts to use the proposed alternate procedure at a high-turnout election (and perhaps even at a low-turnout election), there will not be sufficient time to accomplish the task within the aggressive constraints provided in the draft. It is not unreasonable to assume that inspectors would take 90 minutes to canvass the absentee ballots in one ward at a high-turnout election in a populous municipality. In the city of Milwaukee, for example, if there are 220 wards, the canvassing time for one separate board to count all the absentee ballots might reasonably be estimated at 330 hours, not including the time required for the cross check.

16. 15. Also with regard to the separate absentee ballot canvassing procedure under proposed s. 7.52, because informal election night returns will no longer include absentee ballot returns in some cases, you may wish to consider requiring municipal clerks and boards of election commissioners to post the number of absentee ballots outstanding for their municipalities after the polls close on election night. This will permit candidates on election night to determine whether the absentee ballots outstanding could potentially shift the apparent results based on the preliminary returns when all of the the absentee ballots are finally canvassed.

17. 16. This draft amends s. 8.37, stats., to require each school district clerk to file a copy of each proposed ballot measure or question with the county clerk of each county having territory within the school district no later than 42 days before the date of the referendum at which the measure or question appears on the ballot. Because under the same statute the question must be filed with the school district clerk no later than

the same date, you may wish to give the clerk at least one day after receiving the notice to prepare and transmit the notice to the appropriate county clerks. In addition, you may wish to extend this change to apply to clerks of all special purpose districts in which questions or measures are submitted.

④

18. Most of the component drafts that are included in this draft contained an effective date of January 1, 2006. Because it appears likely that this draft will not

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

become law before January 1, 2006, and because retroactive application of many components of this draft would be logistically or legally problematic, this draft contains a general effective date of January 1, 2006, or the day after publication, whichever is later. Please let me know if you would like to see this issue treated differently.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3947/1dn

JTK:cjs:ch

December 6, 2005

Robert Conlin:

1. Section 5.68 (1) and (2), stats. relates to apportionment of the costs of acquisition of, among other things, election apparatus, ballots, supplies and other materials. Proposed s. 5.68 (3m) directs the election administration council to provide guidance to local governments covering the procurement of election apparatus, ballot forms and supplies. You may wish to consider broadening the scope of proposed s. 5.68 (3m) to cover ballots as well as ballot forms and to cover materials as well as supplies.
2. Proposed s. 6.22 (4) (c) provides that a military elector may indicate an alternate address on his or her absentee ballot application. Under the draft, if the elector's ballot is returned as undeliverable prior to the deadline for return of absentee ballots, the clerk must send or transmit an absentee ballot to the elector at the alternate address. Because under proposed s. 6.86 (1) (c) the deadline for military electors to request absentee ballots is 5 p.m. on the Friday before an election, the draft may not accord sufficient time in some situations for the clerk to mail an absentee ballot, have the ballot returned, and then mail an absentee ballot to an alternate site, and for the elector to receive and vote the ballot and have the voted ballot postmarked by election day.
3. Proposed s. 6.22 (5m) and related provisions, which permit military electors, as defined in s. 6.22 (1) (b), stats., to have their ballots delivered and counted after election day as long as they are postmarked by election day, would, in cases where a recount is requested, require canvasses to be reopened before a recount could proceed. It is difficult to say how much time might be used in the reopening of a canvass. However, because under current law most local elective officials take office either 7, 14 or 21 days after the date of the spring election, it is difficult currently in many cases to complete a recount in time for the winner to take office on the appointed day. The change could make it somewhat more difficult than it is currently. If an elective official cannot take office on time, it can have an effect upon who is appointed to other offices (such as county board chair or member of a city commission) whose terms begin shortly after the term of the elective official who appoints the official.
4. Also with respect to proposed s. 6.22 (5m) and related provisions, currently, under s. 7.15 (1) (cm), stats., municipalities must transmit absentee ballots to all absentee voters who have requested ballots, including the voters who are affected by this draft,

no later than 21 days before the spring election and no later than 30 days before the general election. Although calendar fluctuations can make this task more difficult or less difficult to complete within the time prescribed by law, as a general rule the time allotted for canvassing of the spring and September primaries and ballot preparation for the spring and general elections is used completely. Therefore, under this draft it is likely that, in municipalities where military electors do not return absentee ballots by election night, unless municipal clerks and boards of election commissioners exercise an unusual degree of initiative and municipalities agree to take on some additional costs for expedited printing service, absentee ballots could be distributed as late as approximately 15 days before the spring election and as late as approximately 24 days before the general election. This will make it more difficult for these ballots to be returned through the world mail system by election day. The voters who are affected by this draft will have extra time to return their ballots, but these voters could still be impacted to some degree by this change if their current ballot transit times are less than approximately seven days.

5. Proposed s. 6.22 (5m) permits the ballots of military electors to be counted under certain conditions if received after election day. Proposed s. 6.86 (1) (c) provides a later deadline for military electors to apply for an absentee ballot than is provided for other electors. The proposed treatment of s. 6.86 (1) (b), stats., similarly provides a later deadline for indefinitely confined electors to apply for an absentee ballot than is provided for other electors. Although these provisions generally provide a dispensation, the effect of the provisions is to create a procedure under which the ballots of electors may either be counted or not counted or absentee ballots may be provided or not provided based upon the status of the electors, which could raise an equal protection issue. The U.S. Supreme Court has sometimes approved distinctions made by states in the treatment of absentee voters. However, the Court has said that because voting is a fundamental right, any distinction made by a state will be subject to close scrutiny. See *McDonald v. Board of Election Commissioners*, 393 U.S. 1404, 1407 (1969), in which the Court, after applying this scrutiny, nevertheless permitted Illinois to make a distinction based upon prisoner status. One argument that could be advanced in support of this draft is that national security requires disparate treatment of the ballots of military electors, as defined in this draft, and that the conditions under which those electors must operate may prevent them from taking advantage of the same procedures for expeditious absentee balloting that other electors can conveniently use. It may also be argued that the type of treatment proposed in this draft is not invidious, which may distinguish it from other situations. It is possible to argue, however, that the class of electors that is affected by this draft may not be drawn with sufficient closeness to provide the state with a sufficient basis for treating their ballots differently in every case. Because the Court does not appear to have ruled on this point, it is not possible to predict how the issue posed by this draft will be assessed.

6. The treatment of s. 6.28 (1), stats., to change the deadline for voter registration from 13 days before an election to 20 days before an election will increase the number of voters who must register at an address where they do not expect to be residing on the 10th day before election day, which under s. 6.10 (1), stats., fixes an elector's voting residence. If moving from one election district to another, these electors will need to

vote at the polling places serving their new residences and file address change forms at those polling places. If the registration deadline were the same as the date on which an elector's voting residence is fixed, this process could be avoided.

7. This drafts amends s. 6.33 (1), stats., and creates proposed s. 6.36 (4) to require new applicants for registration who possess a valid driver's license issued by another state to provide the name of the state, the license number, and the expiration date of the license. The draft then requires the Elections Board, following every general election, to contact the chief election official of each state that has issued a valid driver's license to an elector who votes in that election and to inquire whether the elector voted in the same election in that state. The committee's original draft provided for this contact to be made after every election, but since the general election is the only election held in this state that coincides with an election that is also held in every other state, and since it well may be legal for an elector to vote in one state and then vote in this state on a later date, I changed the draft to apply only to general elections. Please let me know if you would like to see this treated differently. The draft also provides for each applicant to enter the expiration date of his or her out-of-state licence on his or her registration form, and for this verification to be made by the board at every general election for so long as the license remains valid. It should be noted that many holders of out-of-state licenses are recent arrivals who eventually apply for Wisconsin licenses. When an applicant receives a Wisconsin license, the Wisconsin DOT requires the applicant to surrender any valid out-of-state license that the applicant possesses. DOT then forwards the out-of-state license to the issuing state with instructions to cancel the license. Therefore, it is possible under the draft for voting inquiries to continue to be made after a license has been canceled. It would be desirable, therefore, to provide that DOT must forward information to the board regarding any out-of-state licenses that are surrendered to it so the board can stop its inquiries. In addition, although this license information remains confidential under the draft, it remains on the registration list forever and may therefore be a source of confusion in later years. You may wish to consider entering this information on a separate list because it will likely be used only for short-term purposes.

8. Proposed s. 6.34, which requires all electors to provide proof of residence when registering to vote and defines the only forms of proof that are acceptable, permits an elector to use as proof "[a]n official identification card or license issued by an employer in the normal course of business that contains a photograph of the license holder, but not including a business card." Because a significant portion of the voting population is self-employed or employed only within the same family, this provision in effect permits this portion of the electorate to create their own registration identification cards. You may wish to consider whether such a self-identification procedure effectuates your purpose in creating this new requirement. In addition, while some of the forms of acceptable proof of residence must be current, the proposed text permits an official identification card issued by a Wisconsin governmental body or unit that does not contain an expiration date, a bank statement, a paycheck, or a check or other document issued by any unit of government to be used as proof even if the document that is used is not current. You may wish to consider requiring that a document that

does not contain an expiration date be dated within some period, for example one year, prior to the date of application for registration.

9. Under proposed s. 6.36 (5), the Elections Board prescribes a fee for obtaining a copy of the registration list that may exceed the cost of reproduction. The draft requires that revenues from fees received be shared between the state and local governments. Because the bill provides no appropriation to the board for use in depositing and dispensing fee revenues, any apportionment of revenues will necessitate requesters of copies to write multiple checks to all jurisdictions receiving revenues in the appropriate amounts. For a statewide list, the procedure approaches unworkability. Therefore, you may wish to add an appropriation or remove this provision from the draft and place it in separate legislation together with the necessary appropriation.

10. Currently, s. 6.56 (3), stats., requires each municipal clerk or board of election commissioners to conduct a postcard audit of voter registrations that occur at polling places on election day. This draft amends that subsection to require that either the clerk, board of election commissioners or elections board conduct the audits. It would be preferable to indicate in the draft who has primary responsibility to ensure that the audit is conducted, in case the parties should disagree over who should conduct the audit. Also in this connection, s. 6.56 (4), stats., requires municipal clerks to perform a similar audit of electors who appear to have voted more than once at an election. You may wish to adopt the same procedure for this audit. In addition, it should be noted that while polling place registrations are audited and mail registrations are confirmed under s. 6.32 (4), stats., (thereby ensuring that the voter's address is deliverable), and this draft proposes to extend confirmation requirements to all registrations not received in person by the municipal clerk or at by a deputy at another authorized location, there exists no similar audit or confirmation for registrations taken in person by the municipal clerk or by a deputy at another authorized location. You may wish to extend the confirmation/audit process to cover these registrations.

11. Currently, under s. 6.79 (2) (d), stats., and related provisions, an elector is required to show identification before voting (or enclose a copy of identification with his or her absentee ballot) if he or she has registered by mail and has not voted in an election for national office in this state. This requirement implements a federal mandate contained in the federal Help America Vote Act of 2002 (HAVA), section 303 (b). The term "identification" is defined in s. 5.02 (6m), stats., and this definition also conforms to HAVA. HAVA also requires that an elector who does not have the requisite identification must be permitted to vote a provisional ballot. Current state law in s. 6.97, stats., implements this requirement. This draft deletes the federally required language from state law and substitutes a system under which all electors, other than military and overseas electors as defined by federal law, must provide "proof of residence" (as defined in the draft) in order to register to vote (see proposed s. 6.34). Under the draft, no separate identification is required to vote because an elector (except a military elector) must have provided the ID in order to register. Section 303 (b) (3) of HAVA provides that the federal identification requirements do not apply to any individual who has registered to vote on a form prescribed under the National Voter Registration Act and HAVA. Among other things, the National Voter Registration Act and HAVA require registration forms to include certain specific

quoted questions and in the case of a question relating to citizenship, specific boxes for the registrant to check "yes" or "no". Although current state law specifies certain information that must be on the registration form and authorizes the board to prescribe the format of the form, Wisconsin's registration forms under current state law and this draft do not conform to these requirements. Therefore, at this point the changes proposed by this draft that delete the federal identification requirements do not appear to be consistent with federal law.

12. The treatment of s. 6.875 (6), stats., and proposed s. 6.875 (7), which require certain information to be posted in nursing and retirement homes and community-based residential facilities and which authorize representatives of political parties to enter the homes and facilities to observe absentee voting procedures, may be difficult to enforce given the fact that these homes and facilities are located on private property. If the owner of the property does not permit the posting or the entry of the observers, do you want to allow the voting at the home or facility to go forward?

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Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

From: Conlin, Robert
Sent: Wednesday, January 18, 2006 9:20 AM
To: Kuesel, Jeffery
Subject: FW: Emailing: 18leibham_rjc.pdf

Attachments: 18leibham_rjc.pdf



18leibham_rjc.pdf
(38 KB)

Jeff:

Here's the final version. Unfortunately, plans were changed at the last second and the Council introduced the bill draft, AS AMENDED by this memo. Thus, I guess we do a /2 of 3947 for introduction with these changes, change the pref note and our big memo describing it. You were busy with Roth Judd when I stopped down. I have a hearing this morning and will try to touch base with you later today.

Bob

Bob Conlin
Senior Staff Attorney
Wisconsin Legislative Council Staff
608-266-2298

-----Original Message-----

From: Uselman, Tracey
Sent: Wednesday, January 18, 2006 7:55 AM
To: Conlin, Robert
Subject: Emailing: 18leibham_rjc.pdf

The message is ready to be sent with the following file or link attachments:

18leibham_rjc.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR JOSEPH LEIBHAM

FROM: Robert J. Conlin, Senior Staff Attorney

RE: Description of Proposed Amendment to LRB-3947/1, Relating to the Administration of Elections

DATE: January 18, 2006

This memorandum describes changes you are proposing to LRB-3947/1, relating to the administration of elections. As you know, that draft legislation is the product of the Joint Legislative Council's Special Committee on Election Law Review and will be considered by the Joint Legislative Council on January 18, 2006. Your proposed amendments would be offered after the draft has been introduced by the JLC and referred to a standing committee in the Senate. Your proposed changes are described below.

- ✓ 1. **Residential Lease.** The draft would be changed to include a residential lease in the list of items that could be used as "proof of residence" for purposes of voter registration.
- ✓ 2. **Deadline for Late, In-Person Registration.** The provisions of the draft changing the deadline for late, in-person registration in the clerk's office from the day before the election to the Friday before the election would be eliminated. Accordingly, the deadline would remain as 5 p.m. or the close of business, whichever is later, on the day before the election.
- ✓ 3. **Prepaid Postage on Voter Registration Forms.** The draft would be changed to restore the provisions of current law that require voter registration forms to contain prepaid return postage.
- ④ 4. **Proof of Residence at Registration, "Roving" Registration Deputies, and Legibility of Registration Forms.** The draft would be revised to retain current law as to when proof of residence is required at registration. The draft would be changed to restore the provisions of current law that authorize "roving" registration deputies but would require them to be trained. A "roving" deputy would be required to sign and print his or her name on the registration form affirming that the deputy has accepted the form. These requirements would also apply

to same day voter registration deputies. Additionally, all voter registrations collected by "roving" deputies would be subject to audit by the municipal clerk before the registrant is added to the statewide voter registration list using a process similar to that required with same day registration. Finally, due to the increased accountability placed on "roving" deputies by this amendment, the draft would be revised to remove the specific direction that registration forms be reviewed for legibility before being accepted.

- ✓ 5. **Deadline for Request for Absentee Ballots.** The provisions of the draft changing the deadline for the receipt of absentee ballot applications from the Friday before an election to the 6th day before an election would be changed to set the deadline at the 5th day before an election.
- ✓ 6. **Prepaid Return Postage for Absentee Ballots.** The draft would be modified to restore the requirement under current law that absentee ballots be sent by municipal clerks with prepaid return postage.
- ✓ 7. **Absentee Ballots to Permanent or Temporary Address.** The draft would be modified to restore current law regarding the mailing of absentee ballots by eliminating the requirement that absentee ballots only be mailed to an elector's permanent or temporary residence.
- ✓ 8. **Alternate Absentee Ballot Site.** The provisions of the draft concerning the alternate absentee ballot site would be revised to provide that the site chosen be publicly accessible, as near as practicable to the clerk's office, and not be located to provide a partisan advantage. Also, when the site is chosen, public notice of the site must be posted in the clerk's office and on the Internet.
- ✓ 9. **Uniform Registration Cards.** A new provision would be added to require registrations be done on Uniform Registration Cards created by the Elections Board.
- ✓ 10. **Effective Date.** The effective date would be changed to July 1, 2006.

Please contact me if you have any questions about this memorandum.

RJC:tlu